The second allows him to recover the *price paid* minus the *actual value* at the time of sale (that is, the difference between what the vendee gave and what he received). *Chandler v. Andrews,* 192 Fed. 543; *Peek v. Derry,* 37 Ch. Div. 541; *Rice v. Olin, supra; Nelson v. Gjestrum,* 136 N. W. (Minn.) 858. This is the rule in equity. *Ryan v. Miller,* 139 S. W. (Mo.) 128.

The arguments advanced for the first rule are that, if the second is followed, the defrauder could speculate on the outcome of his fraudulent enterprise without possibility of loss. *Stoke v. Converse,* 153 Iowa 274. And any advantage lawfully secured to the innocent purchaser in the original bargain inures to the benefit of the wrong-doer. *Morse v. Hutchins,* 102 Mass. 439. For the second rule it is claimed that the action is one in tort for fraud and that the defendant must make good the plaintiff's losses proximately resulting from the fraud, which include the excess paid over the value of the land, and reasonable expenditures made in reliance on defendant's representations, but not the expected fruits of an unrealized speculation. *Smith v. Bolles,* 132 U. S. 125. Also, persons would go around seeking to be duped, so that they might recover for advantageous bargains. *Nelson v. Gjestrum, supra.*

Still a third measure of damages was recognized in *Pruitt v. Jones,* 14 Tex. Civ. App. 84, where it was held to be the difference between the purchase price and a sum which bears the same proportion to that purchase price as the actual value of the land bears to the value if it had been as represented, but this case stands alone.

It would seem that the second is the best rule.

NEGLIGENCE—IMPUTED NEGLIGENCE—NEGLIGENCE OF PARENT.—DENVER CITY TRAMWAY CO. v. BROWN, 143 PAC. (COLO.) 364.—*Held,* the negligence of the parents of a child of tender years cannot be imputed to the child to defeat a recovery by the child for injuries from the negligence of a third party.

The doctrine of imputed negligence has no application where the infant is of sufficient age and capacity to exercise discretion in his own behalf. In such case, it is only his own contributory negligence which will bar a recovery. *Louisville R. Co. v. Sears,* 11 Ind. App. 654; *Lafferty v. Third Ave. R. Co.,* 85 App. Div. 592. It is everywhere conceded that when the parent brings an action to recover for damages resulting from the loss of the child's services, the parent's contributory negligence is a bar to the action. *Feldman v. Detroit United Railway,* 162 Mich. 486; *Davis v. R. R. Co.,* 136 N. C. 115; *Philips v. Denver Co.,* 53 Colo. 458. Not all courts, however, agree that if the negligent parent is the real beneficiary there can be no recovery for death of the child. *Norfolk & Western R. Co. v. Grosclose's Adm'r.,* 88 Va. 267; *Wymore v. Mahaska County,* 78 Iowa 396. The leading case that is opposed to the holding in the principal case is *Hartfield v. Roper,* 21 Wend. 615, which established the so-called New York rule which is still adhered to within that jurisdiction and a few other states. *Pastore v. Livingston,* 131 N. Y. Supp. 971; *Leslie v. Lewiston,* 62 Me. 468; *Casey v. Smith,* 152 Mass. 294. The theory

of the New York rule is that the parent is the agent of the child and for that reason imputes the negligence of the parent to the child. But any such theory of agency must rest, not on fact but on a pure fiction of law. To construct such an agency here does the child an injustice and does not accord with the usual solicitude and protection with which the law favors infants. The principal case is in accord with reason and the weight of authority.

NEGLIGENCE—VIOLATION OF STATUTE OR ORDINANCE—"NEGLIGENCE PER SE."—BEAVER V. MASON, EHRMAN & CO., 143 PAC. (ORE.) 1000.—Under a statute forbidding the employment of persons under eighteen years of age in the operation of elevators, *held,* that a violation of such statute constitutes "negligence per se," and the employer is liable, as a matter of law, for a death resulting from such unlawful employment.

This doctrine, in so far as recognized at all, applies only to regulations protective either of persons or property. *Zimmerman v. Baur,* 11 Ind. App. 607. Its operation is limited to the benefit of those persons or things which the regulation is designed to protect. *Gay v. Essex Electric St. R. Co.,* 159 Mass. 238 (case of trespasser); *Woodruff v. Bowen,* 136 Ind. 431; *Williams v. Chicago, etc., R. Co.,* 155 Ill. 491. No conflict arises when the act expressly awards damages to the party injured by the breach. *Kelley v. Anderson,* 15 S. Dak. 107. By the preponderance of authority the same effect is given in the absence of such a provision. *Smith v. Milwaukee Builders' and Traders' Exchange,* 91 Wis. 360; *Karle v. R. R. Co.,* 55 Mo. 476; *Queen v. Dayton Coal & Iron Co.,* 95 Tenn. 458; *Osborne v. VanDyke,* 113 Iowa 557. Identical in effect, though not in language, are numerous cases allowing a recovery as a matter of law, without raising the question of negligence. *Wilby v. Mulledy,* 78 N. Y. 310; *Aldrich v. Howard,* 7 R. I. 199. If, however, a *qui tam* penalty is provided, this is construed to exclude the action on the case. *Brattleboro v. Wait,* 44 Vt. 459. When a regulation is intended for the protection of the general public, a few cases illogically refuse the remedy to an individual member of the general public specially damaged. *Taylor v. Lake Shore, etc., R. Co.,* 45 Mich. 74. An important line of authorities treat the violation of a statute or ordinance as constituting merely a *prima facie* case of negligence. *U. S. Brewing Co. v. Stoltenberg,* 113 Ill. App. 435. Others regard it as merely competent and important evidence. *Knupfle v. Knickerbocker Ice Co.,* 84 N. Y. 488. In the majority of these cases the courts are not called upon to go farther than this in behalf of the plaintiff. *Carrigan v. Stillwell,* 97 Me. 247; *Siddall v. Jansen,* 168 Ill. 43. In one state the breach of law is merely competent corroborative evidence. *Foote v. American Product Co.,* 195 Pa. St. 190. Under these views there is apparently no liability if the defendant was, without fault, destitute of the means of performance. *Weise v. Tate,* 45 Ill. App. 626. Or if a reasonably prudent man would have disregarded the regulation under the circumstances. *Riegert v. Thackery,* 212 Pa. St. 86. All of these doctrines obviously apply equally to the question of contributory negligence of a plaintiff. *McCambley v. Staten I., etc., Co.,* 32 App. Div. (N. Y.) 346.